



DOCKET FILE COPY ORIGINAL

Federal Communications Commission  
Consumer & Governmental Affairs Bureau  
Washington, D.C. 20554

**CGB**

SEP 9 2003

02-278

Control No. 0302442/aw

The Honorable Jo Ann Emerson  
U.S. House of Representatives  
2440 Rayburn House Office Building  
Washington, D.C. 20515-2508

**RECEIVED**

SEP 29 2003

Federal Communications Commission  
Office of the Secretary

Dear Congresswoman Emerson:

Thank you for your letter on behalf of your constituent, Mr. David O'Neal, regarding the Federal Communications Commission's (Commission) recent amendment to the rules implementing the Telephone Consumer Protection Act of 1991 (TCPA). Specifically, Mr. O'Neal expresses concerns with the amended rules on unsolicited facsimile advertisements. Mr. O'Neal indicates that requiring the necessary express permission to be in writing will place onerous burdens on associations that wish to fax their members.

On September 18, 2002, the Commission released a Notice of Proposed Rulemaking (NPRM) in CG Docket No. 02-278, seeking comment on whether it should change its rules that restrict telemarketing calls and unsolicited fax advertisements, and if so, how. The NPRM sought comment on the option to establish a national do-not-call list, and how such action might be taken in conjunction with the national do-not-call registry rules adopted by the Federal Trade Commission (FTC) and the numerous state do-not-call lists. In addition, the Commission sought comment on the effectiveness of the TCPA's unsolicited facsimile advertisement rules, including the Commission's determination that a prior business relationship between a fax sender and recipient establishes the requisite consent to receive advertisements via fax. The Commission received over 6,000 comments from individuals, businesses, and state governments on the TCPA rules.

The record in this proceeding, along with our own enforcement experience, demonstrated that changes in the current rules are warranted, if consumers and businesses are to continue to receive the privacy protections contemplated by the TCPA. As explained in the Commission's Report and Order released on July 3, 2003, the record indicated that many consumers and businesses receive faxes they believe they have neither solicited nor given their permission to receive. Consumers emphasized that the burden of receiving hundreds of unsolicited faxes was not just limited to the cost of paper and toner, but includes the time spent reading and disposing of faxes, the time the machine is printing an advertisement and is not operational for other purposes, and the intrusiveness of faxes transmitted at inconvenient times, including in the middle of the night.

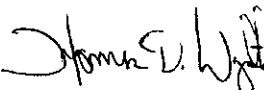
No. of Copies to be filed 2  
List ABCDE

As we explained in the Report and Order, the legislative history of the TCPA indicates that one of Congress' primary concerns was to protect the public from bearing the costs of unwanted advertising. Therefore, Congress determined that companies that wish to fax unsolicited advertisements to customers must obtain their express permission to do so before transmitting any faxes to them. The amended rules require all entities that wish to transmit advertisements to a facsimile machine to obtain permission from the recipient in writing.

The Commission's amended facsimile advertising rules were initially scheduled to go into effect on August 25, 2003. However, based on additional comments received since the adoption of the July Report and Order, the Commission, on its own motion, determined to delay the effective date of some of the amended facsimile rules, including the elimination of the established business relationship exemption, until January 1, 2005. The comments filed after the release of the Report and Order indicate that many organizations may need additional time to secure this written permission from individuals and businesses to which they fax advertisements. Enclosed is a copy of the Commission's Order on Reconsideration, released on August 18, 2003.

We appreciate Mr. O'Neal's comments. We have placed a copy of Mr. O'Neal's correspondence in the public record for this proceeding. Please do not hesitate to contact us if you have further questions.

Sincerely,

  
K. Dane Snowden

Chief

Consumer & Governmental Affairs Bureau

Enclosures

JO ANN EMERSON  
MEMBER OF CONGRESS  
8TH DISTRICT MISSOURI

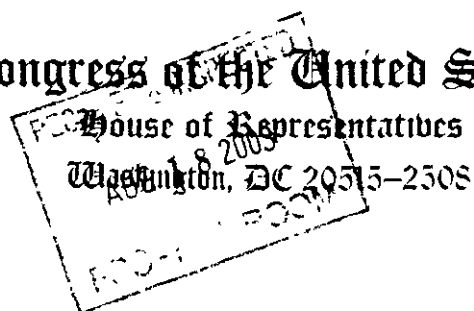
COMMITTEE  
APPROPRIATIONS

FOREIGN AFFAIRS  
AGRICULTURE, RURAL DEVELOPMENT  
FOOD AND DRUG ADMINISTRATION  
AND RELATED AGENCIES

ENERGY AND WATER  
TRANSPORTATION

E-Mail and Web Page  
<http://www.house.gov/joannemerson>

# Congress of the United States



August 12, 2003

THE FEDERAL  
BUREAU OF  
CAPE GIRARD, MO  
572 40 - 10  
L.P.N.  
ROLLA, MO 65401  
ST. LOUIS  
22 EAST COLUMBIA  
SPRINGFIELD, MO 65704  
573 771-3755

Ms. Diane Atkinson  
Congressional Liaison Specialist  
Federal Communications Commission  
445 12th Street, S.W., Room 8-C453  
Washington, DC 20554

*Handwritten:*  
CAB  
TCM  
2442

Dear Ms. Atkinson:

I have received the enclosed inquiry from my constituent, David O'Neal. As you can see, David O'Neal has questions concerning fax transmissions and has articulated them in the enclosed letter. I would like to ask your careful review of these comments and your thoughtful consideration of the points that have been raised.

Please direct your response to Lindsay Holwick of my staff at your earliest convenience. Thank you in advance for your consideration of this matter.

Sincerely,

*Handwritten signature: Jo Ann Emerson*  
JO ANN EMERSON  
Member of Congress

JAE/lh

18 AUG 2003 RCUD

*Beck*  
*FCC*  
*Offis*

To: Member of Congress from Missouri's Eighth district

August 1, 2003

Mr. Bond *MAILED - NO FAX ON WEB SITE*  
Mr. Talent *202-228-1518*  
Ms Emerson *573-335-1931*

*LH*  
*tele.*

I am writing regarding the Telephone Consumer Protection Act (TCPA). I recently read that faxes sent business to business (not to a persons home) will be illegal starting 8/25/03 (FCC docket # 02-278). I understand the logic regarding unwanted telephone solicitation while at home on your personal time, but to the business as well? Does Washington realize how much business is transacted by fax? If we have to revert to the mail, business will come to a screeching halt as will mail delivery. It will be an onerous burden to get "written" permission in advance.

Does the TCPA law also say that unsolicited telephone calls to businesses are illegal? Will I be able to call a garage for an appointment, my congressman, or anyone else. Remember, a fax is a written call and actually is less intrusive than the telephone call itself.

In addition to that, many small businesses use the fax as a means of advertising small business services to other businesses - not individuals, and is no more intrusive than the mail. Many businesses, such as my lease broker business, may well fold with a resulting negative impact on the already fragile economy. That is just what the Democrats are hoping for!

How did business get embroiled in the personal communications issue? I agree with the national "NO CALL" lists for residences, I have been on the Missouri list since inception. What consumers are being protected by this inclusion of business faxing? Is congress prepared to face the economic consequences of this seemingly innocent act? I appeal to each of you to interceded in this issue and have the FCC stay the 8/25 effective date while they do more research with business and the public.

*David O'Neal*  
David O'Neal  
1522 Rue Cheryl  
Bonne Terre, Mo. 63628  
573-358-2998

PS I hope you don't mind my faxing this document unsolicited, and without your written permission, but I felt it was an urgent issue.